

**FOURTH REPORT TO THE LEADERS ON THE  
U.S.-JAPAN REGULATORY REFORM AND COMPETITION POLICY INITIATIVE  
November 2, 2005**

President George W. Bush and Prime Minister Junichiro Koizumi established the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) in June 2001. Now in its fourth year, the Initiative is intended to promote economic growth by focusing on sectoral and cross-sectoral issues related to regulatory reform and competition policy.

Consistent with seeking to achieve tangible progress and the principle of two-way dialogue, the Governments of the United States and Japan exchanged detailed regulatory reform recommendations in October 2004. These recommendations provided the basis for extensive discussions between the two Governments for meetings of the High-Level Officials Group and the Working Groups established under this Initiative. These Groups met throughout the year to discuss reforms in key sectors and areas such as telecommunications, information technologies, intellectual property rights, energy, medical devices and pharmaceuticals, competition policy, transparency and other government practices, privatization, legal system reform, commercial law revision, distribution, consular affairs, and trade and investment-related measures. As in previous years, several of the Working Groups received input from private sector representatives, who made presentations and provided their valuable expertise, observations, and recommendations on important issues taken up under this Initiative.

The Government of Japan has taken a series of regulatory reform measures over the past year, including the adoption by Cabinet Decision in March 2005 of its revised Three-Year Program for the Promotion of Regulatory Reform. The Government of the United States welcomes this decision and the efforts by the Council for the Promotion of Regulatory Reform to improve the regulatory environment in Japan. The Government of the United States also continues to appreciate the work of the Headquarters for Promotion of Special Zones for Structural Reform to promote deregulation through the Special Zones. In addition, the United States and Japan are placing a growing focus on cooperating to strengthen intellectual property rights protection and enforcement in the region and around the world. The two Governments affirm their determination to continue to increase this cooperation in bilateral, regional, and multilateral fora.

The salient regulatory reforms and other measures by both Governments that relate to the work under the Regulatory Reform Initiative are set out in this Report to the Leaders. (Financial services measures taken up in the Financial Dialogue are also included.) The two Governments welcome the measures specified in this Report and share the view that these measures will improve market access for competitive goods and services, enhance consumers' interests, increase efficiency, and promote economic activity.

Both Governments reaffirm their determination to further promote regulatory reform and, upon the request of either government, will meet at mutually convenient times to address the measures contained in this Report.

**REGULATORY REFORM AND OTHER MEASURES BY**  
**THE GOVERNMENT OF JAPAN**

**I. TELECOMMUNICATIONS**

**A. Promotion of Competition**

1. The Government of Japan has implemented a competition policy in the telecommunications field in line with rapid advances of technology, and has thereby facilitated the development of telecommunications markets where broadband services rank among the fastest, most affordable, and most technologically advanced in the world. In addition, the numbers of subscribers of third generation mobile phone and that of subscribed IP telephony numbers exceeded 30 million and 8 million respectively as of March 2005.
2. The Ministry of Internal Affairs and Communications (MIC) has been conducting a competition evaluation of various telecommunications markets since FY2003 in order to accurately understand the status of competition in the telecommunications market, which is becoming increasingly complex as a result of the rapid evolution of Internet Protocol (IP) and broadband technologies and services.
3. MIC published the result of its evaluation of the “Internet access” market in June 2004 after conducting a public comment procedure. According to this market evaluation, based on the circumstances including the current regulatory regime, there has not been any concern about the exercise of market power by either a single carrier or collusive plural carriers in ADSL and FTTH on detached housing and collective housing markets.
4. This year, MIC reevaluated several broadband services such as ADSL, FTTH and cable TV internet services in the area of “Internet access,” and newly evaluated IP telephony market (a major form of application of broadband services) and mobile communications markets (including the cellular phone market, which is composed of three company groups). MIC published the result of the evaluation in July 2005 after conducting public comment procedures.

**B. Fixed Interconnection**

1. The evolution of broadband services, accompanied by the spread of IP telephony, as well as the diffusion of mobile phones, has resulted in a rapid decrease in the volume of traffic over traditional fixed phone lines. The annual rate of decrease over the past 2 years has been around 15 percent in terms of unit communications time. In addition, the environment surrounding the telecommunications market is rapidly changing; one recent example is the start of direct fixed line telephone

services by competitive carriers that use the “dry copper” loops of the incumbent carriers.

2. Taking into consideration these environmental changes in the telecommunications market, the Information and Communications Council submitted the proposal “A Calculation Method of Fixed Interconnection Rates from FY2005 Onward.” The proposal included an evaluation of a new calculation model that could contribute to the reduction of related costs as well as the phased elimination of non-traffic sensitive (NTS) costs over a five-year period.
3. Based on this proposal, MIC revised the related ministerial ordinances in February 2005 for the revision of the calculation method for interconnection rates that became applicable in and after FY2005. Revision of the LRIC model reduced the interconnection-related costs by 11.8 percent. This, together with the reduction of NTS costs, compensated for a significant decrease in traffic (20.2 percent for IC switches and 16.3 percent for GC switches, comparing FY2004 with FY2003), and curbed new interconnection rate increases to 14.9 percent for IC and 2.7 percent for GC.
4. The revised model will be in effect for three years. MIC will continue to conduct any further deliberations on either the revision of the model or its replacement in a transparent manner.
5. In December 2004, the Information and Communication Council established the “Universal Service Working Group” to conduct the review of the universal service fund mechanism. The draft report of the working group’s proposal was released for public comment in July 2005. The Government of Japan and the Government of the United States reaffirmed their continued intentions to maintain any universal service mechanism in line with WTO Reference Paper commitments.

### **C. Mobile Communications**

1. NTT DoCoMo’s interconnection rates have been reduced over the last four years by approximately 25 percent, to levels currently among the lowest in developed countries that employ calling-party-pays systems. The rates filed in March 2005 were reduced by 3.4 percent. Telecommunications carriers with Category II-designated telecommunications facilities (mobile networks) continue to be required to notify MIC of and publicize interconnection tariffs.
2. With regard to spectrum for mobile services, a plan for IMT-2000 frequency arrangement in the 800MHz band was decided through transparent procedures, such as solicitation of public comments and open discussions among interested parties and experts in the “Study Group to Examine Expanded Use of Frequency Bands for Mobile Services.”

3. To further promote competition in the mobile communications market and effective use of spectrum, MIC drafted a license policy for the 1.7GHz band and the 2GHz band that addressed issues such as eligibility for and numbers of new licenses. MIC solicited public comments on the draft policy and consulted the Radio Regulatory Council for its recommendations. The final policy, decided in August 2005, gave priority to new market entrants while also coping with the spectrum congestion of incumbent carriers under its licensing criteria for these bands. Spectrum allocation will be completed by the end of this year, based on the applications received by September 30, through fair and transparent procedures.

**D. Promotion of Advanced Technologies and Services**

1. The Telecommunications Working Group of the Regulatory Reform Initiative heard views from private sector experts on mutual recognition systems and next generation wireless technology.
2. In December 2004, the Information and Communications Council released a partial report proposing technical conditions for high-power passive tag systems using the 950MHz band. Taking into consideration the proposal and other discussions, MIC made necessary adjustments to related ministerial ordinances in April 2005. With regard to the active tag system using the 433MHz band, the discussions at the Information and Communications Council will continue based on the results of experimental trials on the possibility of its shared use with amateur radio. MIC issued an experimental radio stations license for these experimental trials in July 2005. When the Council releases a draft report on these discussions, MIC will conduct public comment procedures.
3. With a view toward the development of a ubiquitous network society, MIC established the “Study Group for Wireless Broadband Promotion” in November 2004. The study group compiled an Interim Report in April 2005, and invited submissions on practical wireless broadband systems. The method to facilitate frequency reallocation for wireless broadband systems is under consideration in this study group.
4. The “Study Group on Policies Concerning the Effective Radio Spectrum Use” decided in its final report to recommend not charging spectrum user fees to license-exempt radio systems that do not have exclusive use of bandwidth.

**E. Deregulation of Network Construction**

1. To accommodate urgent construction of fiber-optic networks by telecommunications carriers that could not have been foreseen at the beginning of a fiscal year, the Ministry of Land, Infrastructure and Transport (MLIT) has been undertaking necessary coordination among relevant parties including road administrators and telecommunications carriers approximately every 3 months.

Based on this coordination, MLIT has been easing the relevant restrictions on road construction in winter and around the end of a fiscal year, to the extent compatible with not seriously disrupting road traffic. These measures will be maintained until the end of FY2005.

2. With regard to directly controlled national roads, MLIT has, since FY2001, enabled electronic application for the use of rights-of-way nationwide. As for the other national roads and roads controlled by local authorities, MLIT encouraged these authorities to enable electronic application procedures. MLIT established and publicized the basic specifications of a standard system for local authorities.

#### **F. Promotion of Trade in Telecommunications Equipment**

1. Following several meetings, MIC and FCC reached a common view on respective procedures suitable for mutual recognition of telecommunications equipment and equipment subject to electro-magnetic compatibility (EMC) requirements. With regard to telecommunications equipment, the Governments of Japan and the United States expect to start formal negotiations in November 2005 with a view toward conclusion of those negotiations in early 2006, if feasible.
2. Regarding EMC, the Government of the United States confirmed that it is prepared to work with Japan to develop an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies.

- G. **Network Channel Terminating Equipment (NCTE):** The Government of Japan will invite public comment regarding the proposed abolishment of the streamlined procedures of the 1990 Exchange of Letters on Network Channel Terminating Equipment (NCTE) (“the 1990 Letters”) which were described in the Third Report to the Leaders. Unless sufficient evidence demonstrating the continued need for these revised procedures is submitted from the interested parties through public comments, the 1990 Letters will cease to be applied in and after FY2006.

## **II. INFORMATION TECHNOLOGIES**

- A. **Removing Regulatory and Non-Regulatory Barriers:** Japan has made significant progress in the area of IT and has realized remarkable achievements. Internet service in Japan, for example, is now among the fastest and most affordable in the world, and Japan’s e-commerce market has grown to become the second largest in the world after the United States. Japan will continue to strive to foster a regulatory environment that further promotes the utilization of IT, including e-commerce.

1. Online Services: The Government of Japan will continue to remove barriers in existing laws and regulations that hinder e-commerce, such as requirements for face-to-face or paper-based transactions and other hindrances to e-commerce and

business community from inappropriate tort litigation and unreasonable awards, and has supported a number of bills to that end.

- b. President Bush strongly supports enactment of medical liability reform and asbestos litigation reform legislation to expedite resolutions and curb the costs of lawsuits. To that end, the President has expressed his commitment to continue to work with the Congress to pass meaningful legal reforms, starting with reform in these areas.
3. Class Actions: On February 18, 2005, the President signed into law the Class Action Fairness Act of 2005. This law makes reforms to the class-action system that will keep out-of-state businesses, workers and shareholders from being dragged before unfriendly local juries, or forced into unfair settlements, while maintaining the valuable benefits that class action lawsuits can have to efficiently allow injured parties to receive proper compensation. Specifically, the Act moves most large, interstate class actions into federal courts, preventing lawyers from shopping around for friendly local venues. And it provides new safeguards to ensure that plaintiffs and class-action lawsuits are treated fairly, including by requiring heightened judicial review of settlements. Enactment of this bill is a significant step in reforming class action litigation.

## II. TELECOMMUNICATIONS

- A. **Participation in the U.S. Wireless Market:** The Government of the United States will continue to provide information to the Government of Japan on the classification between common carriers and non-common-carriers and the distinction between tariffed and non-tariffed services in the United States.
- B. **Deregulation of Licensing and Reporting Requirements:** The Telecommunications Act of 1996 requires the FCC to review the rules issued under the Communications Act that apply to telecommunications service providers to determine whether any regulations are no longer necessary in the public interest due to meaningful economic competition and whether such regulations should be repealed or modified. Regarding certification and licensing criteria for foreign carriers' entry into the U.S. telecommunications market, the United States welcomes the Government of Japan's participation in biennial reviews and will seriously consider any recommendation on its merits.
- C. **Regulatory Predictability**
  1. Dichotomous Classification of Telecommunication Service and Information Service:
    - a. In the Notice of Proposed Rulemaking entitled In the Matter of IP-enabled services (WC Docket 04-36), released in March 2004, the FCC initiated a proceeding to examine opportunities that allow consumers greater choices created by voice services provided over the Internet and provide a measure

of regulatory stability to the communications marketplace and to further promote the development of these Internet-based services. The Notice recognized not only that Internet services should continue to be subject to minimal regulation, but also that mechanisms to implement important social objectives, such as public safety, emergency 911, law enforcement access, consumer protections and disability access, may change as communications migrate to Internet-enabled services. In this proceeding, FCC has asked for comment, on, *inter alia*:

- (1) The jurisdictional nature of IP-related services;
    - (2) Appropriate basis or bases for asserting Federal jurisdiction over the various categories of IP-enabled services;
    - (3) Whether, and on what grounds, one or more classes of IP-enabled services should be deemed subject to *exclusive* federal jurisdiction with regard to traditional common carrier regulation; and
    - (4) The proper legal classification and regulatory treatment of each specific class of IP-enabled services commenters have identified.
  - b. The United States Government will continue to provide information on its review of the dichotomous framework of Information Service and Telecommunications Service.
  - c. In June 2005 the United States Supreme Court ruled in the case *National Cable and Telecommunications Association v. Brand X Internet Services*, upholding the FCC decision classifying cable modem service as an information service. In August 2005, the Commission determined that wireline broadband Internet access services are defined as information services functionally integrated with a telecommunications component.
2. Development of UNE Regulations: The emergence of alternative platforms for delivering services (i.e., cable modem, broadband over powerline, and wireless broadband) has prompted the United States Government to reexamine how best to promote facilities-based competition. In 2004, a U.S. appeals court found that the market conditions under which unbundling could be imposed should be better defined. In February 2005 the FCC released new rules governing the provision of unbundled elements to competitive carriers. These revised rules impose unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using unbundled network elements in conjunction with self-provisioned facilities. This approach is intended to spread the benefits of facilities-based competition to all consumers, particularly small- and medium-sized enterprise customers, consistent with technology trends that are reshaping the industry. The rules are designed to remove unbundling obligations over time as carriers deploy their own networks

and downstream local exchange markets exhibit the same robust competition that characterizes the long distance and wireless markets.

3. Universal Service: The Government of the United States and the Government of Japan reaffirmed their continued intention to maintain any universal service mechanism in line with WTO Reference Paper commitments.

**D. Harmonization of State Level Regulation**

1. The Government of the United States will continue a dialogue with the Government of Japan regarding state-level regulations, including licensing procedures, the Government of Japan's interest in regulatory harmonization among states, and adoption of unified reporting requirements.
2. Taking account of concerns raised by the Government of Japan in this area, the Government of the United States will provide the Government of Japan with relevant information on NARUC's work.

**E. Access Charges**

1. Inter-State Access Charges:
  - a. The FCC is currently in the process of reviewing recommendations and soliciting further comment for developing an intercarrier compensation regime. In March 2005, the FCC released a Further Notice of Proposed Rulemaking with the goal of replacing the myriad existing intercarrier compensation regimes with a unified regime designed for a market characterized by increasing competition and new technologies. In a preceding rulemaking, the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and expressed interest in identifying a unified approach to intercarrier compensation. The Commission solicited comment on a bill-and-keep approach to reciprocal compensation payments governed by section 251(b)(5) of the Act. The Commission also sought comment on alternative reform measures that would build upon the current requirements for cost-based intercarrier payments.
  - b. Several industry groups have developed proposals for comprehensive reform of existing intercarrier compensation regimes and submitted those proposals to the Commission. In this *Further Notice*, the FCC is soliciting comments on these proposals, (available at <http://www.fcc.gov/wcb/ppd/>) including the legal and economic bases for these proposals, as well as the end-user effects and universal service issues implicated by them. In addition to the comprehensive reform proposals submitted in the record, the FCC is seeking comment on alternative reform measures, including changes to the existing intercarrier compensation regimes and cost



standards. The FCC will continue to reform intercarrier compensation through transparent and fair procedures.

2. Intra-State Interconnection Rates: The Office of the U.S. Trade Representative will take reasonable steps to facilitate Government of Japan requests for information about TELRIC models used in specific states and about opportunities for participation in the development of such models.

**F. Procedures for Processing Export Licenses, TAA Approval and Other Measures concerning Commercial Satellites**

1. The Government of the United States will continue its efforts to minimize delays and maximize transparency of procedures in export licensing and TAA approval for commercial communications satellites in accordance with U.S. laws, regulations, and policies. For example, the Government of the United States now provides more forms on the web and has increased the use of on-line applications to help ease the licensing process. The Government of the United States will respond to the extent possible to requests for information from the Government of Japan regarding improvements resulting from this new system.
2. The Government of the United States and the Government of Japan have conducted an informative dialogue on export licensing for commercial satellites. Recognizing the importance of U.S.-Japan relations, the Department of State is prepared to discuss specific issues with the Government of Japan if necessary.

**G. Promotion of Trade in Telecommunications Equipment**

1. Following several meetings, MIC and FCC reached a common view on respective procedures suitable for mutual recognition of telecommunications equipment and equipment subject to EMC (electro-magnetic compatibility) requirements. With regard to telecommunications equipment, the Governments of the United States and Japan expect to start formal negotiations in November 2005 with a view toward conclusion of those negotiations in early 2006, if feasible.
2. Regarding EMC, the Government of the United States confirmed that it is prepared to work with Japan to develop an arrangement that would permit acceptance of results of conformity assessment for information technology (IT) equipment and industrial, scientific and medical (ISM) equipment conducted by accredited Japanese conformity assessment bodies.

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submitted from the interested parties through public comments, the 1990 Letters will cease to be applied in and after FY2006.

### **III. INFORMATION TECHNOLOGY**

#### **A. Protection of Copyright and Related Rights**

1. The Government of the United States recognizes the importance of ensuring the protection of the right of making available, rights concerning live performances, and moral rights, as well as the importance the Government of Japan places on the protection of unfixed works. The Government of the United States has also had a series of productive discussions with the Government of Japan concerning Government of Japan's requests for clear and reliable protection of these items under U.S. law, including the Copyright Act. The Governments of the United States and Japan will continue discussions on these issues.
2. To ensure adequate continuing protection, the Government of the United States will continue to monitor the development of case law concerning the protection of moral rights.
3. The Government of the United States will continue discussions with the Government of Japan on the protection of the right of rental for computer programs with special emphasis on video game programs.

#### **B. Adequate Protection of Rights under the Digital Millennium Copyright Act:** The Governments of the United States and Japan recognized the importance of striking an appropriate balance between the rights of copyright owners and the interests of ISPs and alleged infringers. In this connection, the Government of the United States will continue to observe future developments of case law in this area.

#### **C. New Copyright Issues Pertaining to the Wider Use of the Internet and the Development of Digital Technologies:** The Governments of the United States and Japan exchanged useful information about adequate legal protection and effective legal remedies against the circumvention of effective technological measures. The United States will review the affect of the provisions of the Digital Millennium Copyright Act related to the circumvention of access control technologies on non-infringing uses of any particular class of works and provide appropriate exceptions. This review commenced on October 3, 2005 with the first request for comments from the public. The two Governments will continue to discuss this matter.

#### **D. U.S.-Japan Cooperation to Improve Intellectual Property Rights Protection:**

1. To combat the serious and growing problem of the global trade in pirated and counterfeit goods, both the United States and Japan have recently established major new initiatives. In October 2004, the United States launched the Strategy